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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No. 150401329-5437-01]**

**RIN 0648-BF00**

**Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Framework Adjustment 9**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule, request for comments.

**SUMMARY:** Framework Adjustment 9 proposes management measures to further enhance catch monitoring and address discarding catch before it has been sampled by observers (known as slippage), in the Atlantic mackerel fishery. Framework 9 would implement slippage consequence measures, and a requirement that slippage events be reported via the vessel monitoring system. For allowable slippage events, due to safety, mechanical failure, or excess catch of spiny dogfish, vessels must move 15 nm from the location of the slippage event. For non-allowable slippage events, due to reasons other than those listed previously, vessels must terminate their fishing trip. Slippage events have the potential to substantially affect analysis or extrapolations of incidental catch, including river herring and shad, these proposed measures are

designed to address this issue.

**DATES:** Public comments must be received by [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

**ADDRESSES:** Copies of supporting documents used by the Mid-Atlantic Fishery Management Council, including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901, telephone (302) 674-2331. The EA/RIR/IRFA is also accessible via the Internet at <http://www.greateratlantic.fisheries.noaa.gov>.

You may submit comments, identified by NOAA-NMFS-2015-0049, by any one of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov#!/docketDetail;D=NOAA-NMFS-2015-0049](http://www.regulations.gov#!/docketDetail;D=NOAA-NMFS-2015-0049), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope “Comments on Framework 9.”

**Instructions:** Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address,

etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:** Carly Bari, Fishery Policy Analyst, (978) 281-9224, fax (978) 281-9135.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

NMFS implemented measures to improve catch monitoring of the mackerel, squid, and butterfish fisheries through Amendment 14 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP) (79 FR 10029, February 24, 2014). The focus of Amendment 14 was to improve evaluation of the incidental catch of river herring (alewife and blueback herring) and shad (American shad and hickory shad), and to address incidental catch of river herring and shad. NMFS disapproved three measures that were initially included in Amendment 14 including: A dealer reporting requirement; a cap that, if achieved, would require vessels discarding catch before it had been sampled by observers (known as slippage) to return to port; and a recommendation of 100-percent observer coverage on midwater trawl vessels and 100-, 50-, and 25-percent observer coverage on bottom trawl mackerel vessels, with the industry contributing \$325 per day toward observer costs.

Currently, slippage events are prohibited for vessels issued a limited access mackerel permit or a longfin squid/butterfish moratorium permit and carrying a NMFS-approved observer except in circumstances which allow slippage events including: Safety; mechanical failure; and excess catch of spiny dogfish. Additionally, following a slippage event, vessels are currently

required to submit a Released Catch Affidavit within 48 hours of the end of the fishing trip. In response to the disapproval of the slippage measures in Amendment 14, the Mid-Atlantic Fishery Management Council developed Framework Adjustment 9 to the Atlantic Mackerel, Squid, and Butterfish FMP to further enhance catch monitoring and to address slippage in the Atlantic mackerel fishery. Framework 9 would add slippage consequence measures and slippage reporting requirements to build upon the current measures and to address monitoring the catch of river herring and shad.

Framework 9 would require Tier 1, 2, and 3 mackerel vessels on observed trips to move 15 nm following an excepted slippage event, which includes safety, mechanical failure, or excess catch of spiny dogfish. These vessels would also be required to terminate a fishing trip and immediately return to port following a non-excepted slippage event, which would be due to any reason other than those listed above. In addition to submitting a Released Catch Affidavit, vessels carrying an observer would also be required to report all slippage events through the vessel monitoring system daily catch report for mackerel and longfin squid.

### **Corrections**

This proposed rule also contains an additional regulation change that was mistakenly omitted in the 2015-2017 Atlantic mackerel, squid, and butterfish specifications final rule (80 FR 14870, March 20, 2015). This regulation change would prohibit all vessels with a valid mackerel permit from fishing for, possessing, transferring, receiving, or selling more than 20,000 lb (9.07 mt) of mackerel per trip or per day after 95 percent of the river herring and shad catch cap has been harvested. This change in the regulations was identified, described, and made available for public comment in the proposed rule for the 2015-2017 Atlantic mackerel, squid, and butterfish

specifications (79 FR 68202, November 14, 2014).

## **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Atlantic Mackerel, Squid, and Butterfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A summary of the analysis follows.

### *Description of the Reasons Why Action by the Agency is Being Considered*

This action proposes management measures for the slippage consequences to better monitor catch of river herring and shad in the Atlantic mackerel fishery. The preamble to this proposed rule includes a complete description of the reasons why the Council and NMFS are considering this action and these are not repeated here.

### *Statement of the Objectives of, and Legal Basis for, this Proposed Rule*

The purpose of this proposed action is to minimize slippage, which will improve observer data, and should in turn improve decision-making that uses observer data. Failure to implement the measures described in this proposed rule could result in biased observer data. The preamble

to this proposed rule includes a complete description of the objectives of and legal basis for this action and these are not repeated here.

*Description and Estimate of the Number of Small Entities to Which this Proposed Rule Would Apply*

The proposed alternative applies to mackerel limited access permits. Based on permit data for 2013, 150 separate vessels hold mackerel limited access permits, 114 entities own those vessels, and, based on current Small Business Administration (SBA) definitions, 107 of these are small entities. Of the 107 small entities, 4 had no revenue in 2013 and those entities with no revenue are considered small entities for the purpose of this analysis. All of the entities that had revenue fell into the finfish or shellfish categories, and the SBA definitions for those categories for 2014 are \$20.5 million for finfish fishing and \$5.5 million for shellfish fishing. Of the entities with revenues, their average revenues in 2013 were \$1,201,419. 70 had primary revenues from finfish fishing and 33 had their primary revenues from shellfish fishing.

*Description of the Projected Reporting, Record-Keeping, and Other Compliance Requirements of this Proposed Rule*

The proposed action contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval under Control Number 0648-0679.

Under the proposed action, all limited access mackerel vessels carrying an observer would be required to report all slippage events on the VMS mackerel and longfin squid daily catch report. This information collection is intended to improve monitoring the catch of river herring and shad in the Atlantic mackerel fishery. The burden estimates for these new

requirements apply to all limited access mackerel vessels. In a given fishing year, NMFS estimates that these additionally reporting requirements will not cause any additional time or cost burden from that which was previously approved under OMB Control Number 0648-0679.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the Regional Administrator (see **ADDRESSES**), and e-mail to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or fax to (202) 395-5806.

Notwithstanding any other provisions of the law, no person is required to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number. All currently approved NOAA collections of information may be viewed at: [http://www.cio.noaa.gov/services\\_programs/prasubs.html](http://www.cio.noaa.gov/services_programs/prasubs.html).

*Federal Rules Which May Duplicate, Overlap, or Conflict with this Proposed Rule*

This action contains no other compliance costs. It does not duplicate, overlap, or conflict with any other Federal law.

*Description of Significant Alternatives to the Proposed Action Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact on Small Entities*

The proposed alternative should not have more than minimal impact on the affected small entities compared to recent operation of the fishery (2011-2013, and 2014 landings to date appear similar to 2013). First, the primary impact should only be that vessels will not slip catches before observers have a chance to observe/sample them, which should have almost no economic impact on vessels. Slippage for reasons besides safety, mechanical issues, and spiny dogfish are already prohibited, and this proposed action would require vessels to move 15 nm before fishing again if a slippage for those excepted reasons occurs (vessels could not fish within 15 nm of the slippage event for the remainder of the trip). Total small entity mackerel revenues over 2011-2013 averaged \$2.0 million, for an average of approximately \$19,000 per affected small entity (107), compared to their average revenues of \$1,201,419 in 2013 as described above. Given the small relative value of mackerel for most affected entities, the infrequency of slippage, and given the consequence of excepted slippages is only to move 15 nm, it seems likely that the economic impacts should be minimal for affected small entities. This is especially true since only a small portion of trips are observed, and the measures only apply to observed trips.

If slippages have been masking higher river herring and shad landings, it is possible that prohibiting slippages could lead to the mackerel fishery closing earlier (because of the river herring and shad cap) than it otherwise would if more slippages were occurring. However, given the very low mackerel catches in recent years (less than 20 percent of the quota), it is more likely that catch increases might be limited rather than actually having decreased catches, so small entities should not be more than minimally impacted compared to recent fishery operations. In addition, if vessels are prohibited from targeting mackerel due to the cap, they will likely partially mitigate any foregone revenue by fishing for other species (e.g. squid, butterfish, herring, etc.).



## **List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: May 13, 2015

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Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

### **PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES**

1. The authority citation for part 648 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 648.11, paragraph (n)(3)(ii) is revised and paragraph (n)(3)(iii) is added to read as follows:

#### **§ 648.11 At-sea sea sampler/observer coverage.**

\* \* \* \* \*

(n) \* \* \*

(3) \* \* \*

(ii) If fish are released prior to being brought on board the vessel due to any of the exceptions in paragraphs (n)(3)(i)(A)-(C) of this section, the vessel operator must move at least 15 nm from the location of release before fishing again, and must stay at least 15 nm from the slippage event location for the remainder of the fishing trip. The vessel operator must also complete and sign a Released Catch Affidavit detailing the vessel name and permit number; the VTR serial number; where, when, and for what reason the catch was released; the estimated weight of each species brought on board (if only part of the tow was released) or released on that tow. A completed affidavit must be submitted to NMFS within 48 hr of the end of the trip. The vessel operator must also report a slippage event on the VMS mackerel and longfin squid daily catch report.

(iii) If fish are released prior to being brought on board the vessel due to any reason other than the exceptions in paragraphs (n)(3)(i)(A)-(C) of this section, the vessel operator must immediately terminate the trip and return to port. No fishing activity may occur during the return to port. The vessel operator must also complete and sign a Released Catch Affidavit detailing the vessel name and permit number; the VTR serial number; where, when, and for what reason the catch was released; the estimated weight of each species brought on board (if only part of the tow was released) or released on that tow. A completed affidavit must be submitted to NMFS within 48 hr of the end of the trip. The vessel operator must also report the slippage event on the VMS mackerel and longfin squid daily catch report.

\* \* \* \* \*

3. In § 648.14, paragraph (g)(2)(ii)(G) is added, paragraphs (g)(2)(vi) and (vii) are revised and paragraphs (g)(2)(viii), (ix), and (x) are added to read as follows:

#### **§ 648.14 Prohibitions.**

\* \* \* \* \*

(g) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(G) Fish for, possess, transfer, receive, or sell; or attempt to fish for, possess, transfer, receive, or sell; more than 20,000 lb (9.07 mt) of mackerel per trip; or land, or attempt to land more than 20,000 lb (9.07 mt) of mackerel per day after 95 percent of the river herring and shad cap has been harvested, if the vessel holds a valid mackerel permit.

\* \* \* \* \*

(vi) Release fish from codend of the net, transfer fish to another vessel that is not carrying a NMFS-approved observer, or otherwise discard fish at sea before bringing the fish aboard and making it available to the observer for sampling, unless subject to one of the exceptions defined at § 648.11(n)(3) if issued a Limited Access Atlantic mackerel permit, or a longfin squid/butterfish moratorium permit.

(vii) Fail to move 15 nm, as specified at § 648.11(n)(3)(ii).

(viii) Fail to immediately return to port as specified at § 648.11(n)(3)(iii).

(ix) Fail to complete, sign, and submit a Released Catch Affidavit if fish are released pursuant to the requirements at § 648.11(n)(3).

(x) Fail to report a slippage event on the VMS mackerel and longfin squid daily catch report.

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